

IN THE MATTER OF THE ONTARIO  
HUMAN RIGHTS CODE R.S.O. 1970,  
CHAPTER 318, AS AMENDED



AND IN THE MATTER OF a complaint  
made by Mr. Kingsley Bailey of  
Hamilton, Ontario alleging  
discrimination in employment  
by The Right House Limited, 35  
King Street E., Hamilton, Ontario  
and their servants.

Board of Inquiry

M. R. Gorsky

Appearances:

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| Mr. D. D'Oliveira, Esq.<br>- and -<br>Mr. A.C. Millward | - Counsel for the<br>Ontario Human Rights<br>Commission and the<br>Complainant, Mr.<br>Kingsley Bailey |
| Mr. J.S. Kelly  | - Counsel for The Right<br>House Limited   |
| Dates of Hearing  | - March 15, 17, 18 and<br>19, 1980   |
| Place of Hearing  | - City Hall, 71 Main St. W.,<br>Hamilton, Ontario.   |



## DECISION

In this case, the complainant, Kingsley Bailey, complained that he was "refused continuance of employment, dismissed from employment, and was ... with respect to terms and conditions of employment" discriminated against by The Right House Limited, 35 King Street East, Hamilton, Ontario, its servants and agents by reason of his race and colour, contrary to sections 4(1)(b) and 4(1)(g) of the Ontario Human Rights Code, R.S.O. 1970, c.318, as amended. On the 19th day of October 1979, I was appointed a board of inquiry to inquire into the above complaint. Mr. Millward, co-counsel for the Commission, acknowledged that in order that I can make a finding of discrimination, as alleged, I must be satisfied that, on a balance of probabilities, the Respondent, The Right House Limited, did discriminate against the complainant, contrary to the sections of the Code referred to.

Mr. Bailey, who is a black man of the Negro race, was, in the fall of 1976, when he was 17 years of age, hired by the Respondent as a salesman with the intention of his working during the Christmas season. His employment continued beyond the Christmas season and he worked, thereafter, on a regular, part-time basis, usually on Thursday and Friday nights and on Saturdays.

From the evidence, it was clear that Mr. Bailey got on well with almost all of his fellow employees and he was a well liked member of the Respondent's staff. It appears further from the evidence that he performed his job of salesman well and his rating sheets disclosed that this was the case in most categories



provided for. In addition, the evidence discloses that of approximately 400 persons employed by The Right House Limited, Mr. Bailey was one of the few black people hired. There was evidence indicating that except for an Angela Best, who had worked for the Respondent for a few weeks and one, Ingrid Knowle, who had worked for the Respondent for an unspecified, short period of time, Mr. Bailey was the only black person on staff.

The incident which precipitated the complaint occurred on Saturday, March 25, 1978, when Mr. Bailey was summoned to the office of Mr. Gary Hurtubise, the then superintendent of the Respondent, which function included his being in charge of personnel matters. Mr. Hurtubise was absent from the store at the time. At that time Mr. Bailey was confronted by Mr. Stan Johnson, who was the manager of the Respondent's drapery department and who also functioned as assistant superintendent with responsibility for personnel matters in the absence of Mr. Hurtubise. Also present at that time were Mrs. Christina Sigfridson, a store detective, Tony Wilson, an acquaintance of Mr. Bailey, and two police officers, Constable Jones and Constable Mason. At that time Mr. Bailey was advised that there had been a theft of ties by Mr. Wilson. Mr. Johnson informed Mr. Bailey that this matter would have to be brought to the attention of Mr. Hurtubise. When Mr. Bailey returned to work the following week, the date being unclear, following a conversation with

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the various methods and tools used to collect and analyze data. It mentions the use of surveys, interviews, and focus groups to gather qualitative information, as well as statistical analysis for quantitative data.

3. The third part describes the process of identifying and addressing the needs and concerns of the stakeholders. It highlights the importance of active listening and communication in this process.

4. The fourth part discusses the role of the management team in overseeing the implementation of the findings and recommendations. It stresses the need for clear communication and collaboration between all levels of the organization.

5. The fifth part provides a summary of the key findings and conclusions of the study. It reiterates the importance of ongoing monitoring and evaluation to ensure the effectiveness of the implemented changes.

6. The final part of the document includes a list of references and a bibliography, citing the various sources used in the research and analysis.



Mr. Hurtubise, Mr. Hurtubise discharged Mr. Bailey for failure to protect store merchandise at the time of the theft by Mr. Wilson. Mr. Bailey denied being involved in the theft by Mr. Wilson or that his actions in any way facilitated the theft. It should be noted that Mr. Wilson was also a black man.

It should be emphasized, and Mr. Millward, for the Commission, stressed the fact, that the principle submission as to discrimination was not based upon any allegation of overt discrimination. It was, however, as a result of the above mentioned incident that Mr. Bailey filed the complaint which has given rise to this proceeding. Mr. Millward explained his position as follows: The Ontario Human Rights Code requires that conditions of employment must be the same for persons of all races and colours and that the criteria for dismissal of employees must be applied equally to persons of all races and colours. Mr. Millward argued that in the case of three employees dismissed in the past, being a Mrs. Putney, a Mrs. Alvey and a Mrs. Cameron, the reasons for dismissal were all based on actual thefts or involvement in thefts. Mrs. Putney had been apprehended by Mrs. Sigfridson, the store detective employed by the Respondent, with unpaid for items on her person. Mrs. Alvey had confessed that she had aided and abetted Mrs. Putney and both had given statements to that affect to representatives of the Respondent. Mrs. Cameron was discharged when it was discovered that she was responsible for work shortages although the representatives of the Respondent believed she, also, was involved in the thefts by Mrs. Putney. Mr. Bailey, on the other hand, was dismissed for failing to protect merchandise.

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Accordingly, it was submitted, that Mr. Bailey was the subject of disparate treatment and that disparate treatment was discriminatory. Mr. Kelly, counsel for the Respondent submitted that the reason for Mrs. Cameron's discharge was stated to be a "work shortage" and she is stated to have denied any responsibility for the shortage. Nevertheless, she was still discharged. I would find that looking at the case-of Mrs. Cameron, it is difficult to conclude that her treatment was significantly different from that of Mr. Bailey. "Work shortage" falls short of an employee being found with stolen property, even though the agents of the Respondent believed she was in some way involved in the thefts committed by Mrs. Putney. Similarly, there was no admission of responsibility in the case of Mrs. Cameron. Although the Respondent discharged Mr. Bailey for failing to protect its merchandise, as in the case of Mrs. Cameron, it is apparent that the Respondent suspected Mr. Bailey was somehow involved in a theft.

Mr. Millward acknowledged that his argument was not predicted upon my finding that there was any overt evidence of racial or colour discrimination or even the need to find that there was any intention on anyone's part to discriminate against Mr. Bailey, contrary to the provisions of s.4(1)(b) and s.4(1)(g) of The Ontario Human Rights Code. His conclusion merely required a finding that the treatment afforded Mr. Bailey and any other group of employees with respect to terms or conditions of employment was different. It should be noted that with respect



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to terms of hiring, increases in salary, opportunities for continued employment and overt treatment, the evidence disclosed no examples of Mr. Bailey being treated differently from white employees. His qualities as a salesman were recognized and salary increases granted in accordance with what appears to be a standard Company practice. Similarly, his evident qualities as a salesman were recognized in maintaining opportunities for part time work.

Mr. Millward, employing the same argument, relied on the case of Mr. Ross Depalma, who was employed as a salesman in the store. When an acquaintance of his (Mr. Keith Morton) stole a pair of gloves during a period of time when Mr. Depalma had left the area where the merchandise was located, Mr. Depalma was only reprimanded. In Mr. Millward's submission, the circumstances in the Depalma incident were not in any significant sense different from those affecting Mr. Bailey, at the time the ties were stolen by Mr. Wilson. The only difference suggested by Mr. Millward was that there was an inference drawn in the case of Mr. Bailey that he was somehow involved in the theft by Mr. Wilson, while in Mr. Depalma's case an opposite conclusion was arrived at. Mr. Bailey was discharged and Mr. Depalma received only a verbal reprimand. This, it was suggested, represented another example of disparate treatment being applied to Mr. Bailey.

Mr. Kelly submitted that the cases of Mr. Bailey and Mr. Depalma were distinguishable. He argued that the evidence disclosed that Mr. Keith Morton, an acquaintance of Mr. Depalma, came into the store and engaged Mr. Depalma in conversation. Mr. Depalma



was asked for some money by Mr. Morton. Mr. Depalma, after refusing the request, moved away from Mr. Morton in order to serve a customer. It was at this time that Mr. Morton stole the gloves. Mr. Kelly contrasted this situation with the one involving the theft of ties by Mr. Wilson. My examination of the evidence satisfies me that at the time Mr. Bailey moved away from Mr. Wilson, who to Mr. Bailey's knowledge had no money with which to make a purchase, it was not to serve a customer. While Mr. Bailey was away from the counter on which the ties had been placed, Mr. Wilson pushed them off the counter from whence they fell into an open bag which Mr. Wilson had placed on the floor. The significant characteristic of the Company's response to both incidents is that it was consistent with a standard pattern of behaviour. As the representatives of the respondent viewed such events they bespoke of conclusions consistent with or inconsistent with involvement in a theft. To the Company, failure to protect Company merchandise, while not amounting to theft was related to theft. In the case of Mr. Depalma, attending to a customer was less blameworthy, even though Mr. Depalma's absence from the glove counter enabled Mr. Morton to complete the theft. Mr. Bailey on the other hand, it was concluded, should not have left the counter where Mr. Wilson was located when no pressing duty required it. Such action, in leaving the counter, was perceived of as more blameworthy than the case involving Mr. Depalma.







Mr. Millward also relied upon the fact that Mrs. Sigfridson had, at one time, requested another employee, Mrs. Orla Thompson, to keep Mr. Bailey under surveillance and he was the only person with respect to whom such a request had been made of Mrs. Thompson, notwithstanding that Mrs. Sigfridson was, at that time, keeping a number of other persons under surveillance. This, it was suggested, represented a condition of employment which did not apply to other employees. Mr. Millward emphasized that while these acts did not amount to a situation where a finding of overt discrimination could be made on the basis of race or colour or that it amounted to an intention on the part of the employer to discriminate, it did, represent an evidentiary basis for a finding of disparate treatment amounting to a breach of sections 4(1)(b) and 4(1)(g) of The Ontario Human Rights Code. I am satisfied that Mrs. Sigfridson did not limit her requests for assistance in maintaining surveillance of employees in the manner suggested and that Mrs. Thompson was not the only employee who assisted Mrs. Sigfridson in the manner suggested. I found it significant that Mrs. Thompson did not find Mrs. Sigfridson to manifest feelings of prejudice based on race or colour but she did find her overzealous, on occasion, and this appeared to Mrs. Thompson as if Mrs. Sigfridson was intent on pursuing matters where an employee was, in fact, blameless.

It was Mr. Kelly's position that the defence of the respondent could be based on the fact that on the information available to it, it was more than justified in dismissing Mr. Bailey. In the altern-



ative, should it be found that all of the allegations made and the observations made by Mrs. Sigfridson were unfounded, the decision to discharge Mr. Bailey was based on those observations and not, in any way, on the basis of his race or colour.

My examination of the evidence satisfies me that Mrs. Sigfridson followed a uniform pattern of surveillance and that this pattern did not vary, in any material respect, when it was directed at white or black employees. From the evidence of Ross Depalma it appears that the pattern of surveillance described by Mrs. Sigfridson was usual and part of the routine expected by employees. Mrs. Sigfridson, in carrying out her surveillance, did not usually request explanations from employees who were the subject of surveillance. In accordance with her experience and with the knowledge and consent of her supervisors, she recorded her observations. Many of those observations led to suspicions but she did not act unless she concluded that she had more than a suspicion to act on. There is no question that she had kept Mr. Bailey under surveillance for some time and, based on these observations had arrived at certain conclusions negative to Mr. Bailey. There was a great deal of other evidence which indicated that Mrs. Sigfridson had many other employees under surveillance and had similar suspicions of the propriety of some of their conduct.

I do not have to agree with the methodology employed by Mrs. Sigfridson or with the conclusions she drew from her observations. Nor do I have to agree with the practice of letting suspicion pile on suspicion without endeavoring to obtain an explanation from an employee suspected of wrongdoing. My agreement



with the method of operation of store security procedures is not in issue. The issue is: were they uniformly applied to black and white employees?

Mr. Bailey, while candidly acknowledging that Mrs. Sigfridson had never said anything to him which might be considered racially motivated, testified that she apparently avoided saying "hello" to him in response to his greetings. Mrs. Sigfridson denied that this was the case and the evidence of Ross Depalma was contrary to that of Mr. Bailey.

What we have in this case is a system of surveillance which affected many employees, almost all of them white. Conclusions were made by Mrs. Sigfridson, that certain types of conduct indicated a likelihood of involvement in the theft of Company property or that other irregular conduct was being engaged in by an employee. In the case of Mr. Bailey I cannot find that his being under surveillance with respect to a number of incidents demonstrated that he had been singled out for disparate treatment. As I have already indicated it is not necessary for me to find that the Company's surveillance techniques were either warranted or profitable and I emphasize that I am not judging them in this light. What Mrs. Sigridson saw as being suspicious, in the conduct of Mr. Bailey, was based on a set of standards that I find she applied uniformly in the case of all employees.

The essential correctness of Mrs. Sigfridson's objective observations was not seriously undermined and Mr. Millward acknowledged this. My view of the matter might be altered considerably if it was demonstrated that Mrs. Sigfridson's observations, as recorded by her, were in any meaningful way different from what







had actually taken place. This might be some evidence indicating that when observing a black man her perceptions were warped. There was no such evidence.

Concerning the question as to what conclusions are to be drawn from a failure to ask Mr. Bailey for explanations of the other events observed by Mrs. Sigfridson, it appears that she was instructed not to do so, in the case of all employees.

Of additional significance is the fact that Mr. Stan Johnson observed the final event (the theft by Mr. Wilson) and reported what he saw to Mr. Hurtubise, who acted on Mr. Johnson's and Mrs. Sigfridson's information. There was no suggestion that Mr. Johnson was looking at the matter in a warped manner.

I do not believe that Commission counsel was relying on the failure to advise Mr. Bailey of the fact that he had been under suspicion with respect to a number of incidents as amounting to a breach of sections 4(1)(b) and 4(1)(g) of The Ontario Human Rights Code. Such a requirement would impose a burden with respect to black employees that was not assumed with respect to white employees. Certainly there is no evidence that such information had been conveyed in the cases of Mrs. Putney, Mrs. Cameron, Mrs. Alvey or Mr. Depalma.

The only evidence, of discrimination relied on by Mr. Millward, who readily acknowledged this to be the case, was circumstantial in nature. The fact that there had been very few black employees in the store and, that at the time in question, Mr. Bailey was the only black employee, is, in the circumstances, insufficient evidence of discrimination against blacks. That



such evidence might, in combination with other evidence, be capable of supporting a case of discrimination does not affect my assessment of the evidence in this case. There will often be cases where a peculiar coincidence of events, in the context of shallow explanations proffered, are indicative of discrimination. I am not unmindful of the fact that many acts of racial discrimination are not overt but are carried out in a subtle fashion, leaving a conclusion to be inferred from the conduct in question. In such case strong suspicions are created by what would otherwise be unlikely coincidences and patterns of events.

At the conclusion of his argument Mr. Millward summarized what he viewed to be the issues before me: "(a) to decide just what it is that Mr. Bailey did or didn't do and (b) to decide whether his treatment was different from anyone else's".

These issues were seen in the same manner, in all fundamental respects, by Mr. Kelly. However, Mr. Kelly observed that even if I found that Mr. Bailey had in no way been involved in the theft committed by Mr. Wilson, the question would remain: was the behaviour of the various persons who represented the Respondent and who were involved in the incidents affecting Mr. Bailey of such a nature as to disclose a breach of sections 4(1)(b) and 4(1)(g) of The Ontario Human Rights Code?

As I have found that there was no significant difference in the way the Respondent treated all of its employees who were the subject of surveillance and in the way that it acted in response to conclusions derived from such observations, I find



that there has been no breach by the Respondent of section 4(1)(b) and section 4(1)(g) of The Ontario Rights Code, as alleged in the complaint. If the Respondent treated Mr. Bailey unfairly it was the result of a process uniformly applied to all employees, be they black or white.

The fact that I found Mr. Bailey to be a forthright witness who endeavored to tell his story in an honest and straightforward fashion cannot affect the result in this case. I suspect that some of the feelings engendered in Mr. Bailey were a response to what he could, with some justice, perceive as peculiar practices being conducted by the Respondent as part of its security operations. Because, on the facts of this case, they were directed at him, they could easily be seen as being motivated by other than security considerations. I have before me evidence of these operations as they were applied to all employees and I have concluded that they were applied uniformly to all employees. That being the case, for the purpose of adjudicating upon the complaint, no purpose would now be served in undertaking to go further into the question of guilt or innocence.

DATED AT London, Ontario

22 October, 1980

M. R. Gorsky

M. R. Gorsky

Board of Inquiry

